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Attorney for Plaintiffs Thomas Avina; Rosalie Avina; Brittney Avina; Briana Avina

FILED
2008 JUL 21 PM 2:18
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ______ DEPUTY

'08 CV 1302 W WMc

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THOMAS AVINA; ROSALIE AVINA; BRITTNEY AVINA; BRIANA AVINA, **Plaintiffs,** **vs.** **UNITED STATES OF AMERICA,** **Defendant.**	**Case No:** **COMPLAINT FOR PERSONAL INJURIES (Federal Tort Claim Act)**

Plaintiffs alleges as follows:

COMMON ALLEGATIONS

1. This action arises under the Federal Tort Claims Act, 28 USC § 1346 (b), 2671-80, as hereinafter more fully appears.

2. Plaintiffs THOMAS AVINA, ROSALIE AVINA, BRITTNEY AVINA, and BRIANA AVINA, are United States citizens and residents of the State of California.

3. On or about January 20, 2007, at or about 7:00 a.m., plaintiffs were at their home then located at 1601 Drew Road, Space 14, El Centro, California 92243 ("Premises"), still asleep from the night before.

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4. At or about 7:00 a.m., on the date of the incident, unknown employees of the United States of America showing markings and credentials identifying themselves as employees of the Drug Enforcement Agency (DEA), broke down the front door to the plaintiffs' residence.

5. The unidentified DEA employees then proceeded to roust the plaintiffs from their sleep and beds, forcing all plaintiffs to the floor at gunpoint , physical threats and shouting of orders.

6. Plaintiffs were forced to comply with coercive threats which created a sense of fear for physical safety especially with the sight of guns pointed at them.

7. At the time of the incident, an unidentified DEA officer spoke with plaintiff Thomas Avina insisting Mr. Avina was a person named Luis Alvarez. After ascertaining Mr. Avina was not Luis Alvarez, the unidentified DEA officer insisted Luis Alvarez lived with the Avina at the Premises.

8. During this encounter, during which plaintiffs did not resist or were otherwise uncooperative, it became clear to the unidentified DEA agents that they had raided the wrong residence.

9. Plaintiff has complied with the administrative claims procedure set out in the Federal Tort Claims Act and has received a notice of rejection from the appropriate government offices by letter dated February 19, 2008.

FIRST CAUSE OF ACTION
(Assault and Battery)

10. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 9 as though fully set forth herein.

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11. Defendant UNITED STATES OF AMERICA employees, while in the course and scope of their employment and without any justification, intentionally invaded the plaintiff's Premises which invasion caused plaintiffs to suffer injury.

12. In committing the acts alleged above, defendant UNITED STATES OF AMERICA employees acted maliciously and were guilty of a wanton and reckless disregard for the rights and safety of Plaintiffs, and by reason thereof, Plaintiffs demand damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

13. Plaintiff incorporate by reference each and every allegation contained in paragraphs 1 through 12, above as if fully set out herein.

14. On or about January 20, 2007, defendant's unidentified employees intentionally harmed plaintiff without justification when all of plaintiffs' acts were lawful and pursuant to the instruction to all legal behavior expected of any law-abiding citizen.

15. The conduct of the defendant's employees was outrageous in that an abusive use of their authority was exercised upon plaintiffs and the force used was excessive and designed to injure plaintiffs.

16. By said conduct, defendant's employees intended to cause plaintiffs emotional distress, and indeed, by use of the excessive force intended to instill fear and physical coercion such that plaintiffs would submit to defendant's employees' demands even though plaintiffs were cooperative and not acting in a manner to justify the invasion of plaintiff's residential Premises.

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17. As a result of the defendant's employees' actions, plaintiffs were caused to suffer mental and emotional distress a by the excessive force used by the defendant's employees.

18. As a proximate result of the acts of defendant's employees, plaintiffs have been caused to suffer emotional injury in an amount according to proof at trial.

Wherefore plaintiffs pray for judgment against defendant United States of America as follows:

1. For general damages in an amount according to proof at trial;
2. For all economic damages according to proof;
3. For all costs of suit;
4. For such other relief as the court deems proper.

DATED: 7-21, 2008

RAYMOND BUENDIA
Attorney for Plaintiffs Avina

RAYMOND BUENDIA (SBN 94975)
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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 2008 JUL 21 PM 2:18 CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY DEPUTY

I. (a) PLAINTIFFS
THOMAS AVINA; ROSALIE AVINA; BRITTNEY AVINA; BRIANA AVINA

DEFENDANTS
UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff: Imperial
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
RAYMOND BUENDIA, 110 West C Street, Suite 1014, San Diego, CA 92101, (619) 338-8005

Attorneys (If Known)

'08 CV 1302 W WMc

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☒ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
Federal Tort Claim Act, 28 USC 1346(b), 2671-80.

Brief description of cause:
Assault and Battery, Infliction of Emotional Distress

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 500,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ____ DOCKET NUMBER ____

DATE: 07/21/2008

SIGNATURE OF ATTORNEY OF RECORD: Raymond Buendia

FOR OFFICE USE ONLY

RECEIPT # 153187 AMOUNT $350 APPLYING IFP ____ JUDGE ____ MAG. JUDGE ____

TLC 7/21/08

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

153187 - TC

July 21, 2008
14:09:45

Civ Fil Non-Pris
USAO #.: 08CV1302
Judge..: THOMAS J WHELAN
Amount.: $350.00 CK
Check#.: BC1830

Total-> $350.00

FROM: THOMAS AVINA ET AL.
VS.
USA